

E-Filed on 5/14/10

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Robert M. Charles, Jr. NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³
Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE 60TH STREET VENTURE, LLC
LOAN**

Date of Hearing: June 15, 2010
Time of Hearing: 9:30 a.m.

Geoffrey L. Berman declares under penalty of perjury:

I am an adult person competent to testify in court.

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 1. I make this declaration based upon my personal knowledge, and upon the
2 records USA Commercial Mortgage Company (“USACM”) as to which I am a successor
3 custodian of records.

4 2. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which
5 is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
6 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
7 Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
8 Bankruptcy Court for the District of Nevada.

9 3. On December 22, 2005, 60th Street Venture, LLC made and delivered to
10 various lenders a Promissory Note, in an amount of \$3,700,000 (the “Note”).

11 4. The Note is secured by a second position Deed of Trust, Assignment of
12 Rents, Security Agreement and Fixture Filing (“Deed of Trust”) on real property and
13 improvements thereon, as described in the Deed of Trust.

14 5. The Deed of Trust was originally recorded on December 30, 2005 at
15 Instrument Number 2005-1119677 in the Official Records of the San Diego County
16 Recorder’s Office.

17 6. The Deed of Trust expressly states that the deed is in “second position.”

18 7. The Offer Sheet providing information about the 60th Street Loan that was,
19 upon information and belief, supplied or made available to the 60th Street Claimants prior
20 to their lending money, expressly states that the investment is a “**SUBORDINATED**
21 **TRUST DEED INVESTMENT**” (emphasis in the original) and further states that the
22 collateral will consist of a “second deed of trust.” A true and correct copy of the Offer
23 Sheet obtained from the files of USACM is attached hereto as **Exhibit A**.

24 8. Moreover, the Offer Sheet’s stated loan to value calculation is supported by
25 the property’s Aggregate Retail Value as of November 11, 2004, as assessed by CB
26 Richard Ellis in a November 18, 2004 appraisal.

9. The Note is also secured by a Guaranty USACM entered into with Matthew Maisel and Rob Presley (the “Guarantors”), wherein the Guarantors expressly agreed to pay all indebtedness owed by 60th Street Venture, LLC related to the Note.

10. According to USACM records, the 60th Street Loan was performing, in that interest was being paid from a reserve, but the Loan defaulted on August 1, 2006. During the bankruptcy case, USACM treated sums due to the Direct Lenders in accordance with this Court's orders and the confirmed Plan. The USACM Trust does not know the ultimate disposition of this loan or whether the Direct Lenders were repaid in whole or in part.

I declare under penalty of perjury that the foregoing is true and correct.

Executed Friday, May 14, 2010 at Los Angeles, California.

s/ Geoffrey L. Berman

Geoffrey L. Berman, Trustee

USACM Liquidating Trust

gberman@dsi.biz

c/o Development Specialists, Inc.

333 South Grand Avenue, Suite 4070

Los Angeles, CA 90071-1544

Copy of the foregoing (without exhibits)
mailed by first class
postage prepaid U.S. Mail on
May 14, 2010 to the
investors in the 60TH Street Venture, LLC Loan listed
on Exhibit A to the Objection.

s/ Renee L. Creswell

Renee L. Creswell